

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

MAY 08 2015

Clerk, U.S. District Court
District Of Montana
Missoula

TWAIN NEWMAN AYERS,

Cause No. CV 15-34-BLG-DLC

Petitioner,

vs.

DAVID BERKEBILE, et al.,

**ORDER DISMISSING PETITION
AND DENYING CERTIFICATE OF
APPEALABILITY**

Respondents.

Petitioner Twain Newman Ayers, a state prisoner proceeding pro se, has previously filed habeas petitions in this Court under 28 U.S.C. § 2254. On May 4, 2015, he filed another.

Ayers was convicted and sentenced in Dawson County on October 7, 2011, for a fourth or subsequent offense of driving under the influence of alcohol. He was convicted and sentenced in Yellowstone County on October 28, 2011, for issuing a bad check. Regardless of which conviction he intends to challenge in the instant petition, he has already litigated a habeas petition to conclusion in this Court. *See Ayers v. Laughlin, et al., Nos. CV 14-110 and 14-164-BLG-DLC (D. Mont. judgment entered Jan. 21, 2015).*

Ayers may file another petition only if and when he obtains leave to do so from the Ninth Circuit Court of Appeals. 28 U.S.C. § 2244(b). Ayers has not obtained leave. This Court lacks jurisdiction to hear his claims. *Burton v. Stewart,*

549 U.S. 147, 149 (2007) (per curiam).

As Ayers has repeatedly been advised, his claims are frivolous. He does not make any showing that he was deprived of a constitutional right. In addition, this Court plainly lacks jurisdiction under *Burton*. A certificate of appealability is not warranted. 28 U.S.C. § 2253(c)(2).

Based on the foregoing, the Court enters the following:

ORDER

1. Ayers's Petition (Doc. 1) is DISMISSED for lack of jurisdiction as an unauthorized second or successive petition under 28 U.S.C. § 2254.
2. The Clerk of Court is directed to enter a judgment of dismissal.
3. A certificate of appealability is DENIED.
4. This case is CLOSED. Other than a notice of appeal, no action will be taken on any further filings under this cause number.

DATED this 8th day of May, 2015.



Dana L. Christensen, Chief Judge
United States District Court